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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,401	04/11/2001	Roman S. Ferber	HOME 0459 PUS	3432

7590

01/13/2004

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EXAMINER

MATHEW, FENN C

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 01/13/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/833,401

Applicant(s)

FERBER ET AL.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern (U.S. 4,962,759) in view of Lin (U.S. 6,183,430) and further in view of Haraga (U.S. 5,245,714). Please see paragraphs 3-6 of the office action dated September 2, 2003.
3. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern in view of Lin and Haraga as applied to claim 1 above, and further in view of Barrada (U.S. 5,588,161). Please see paragraph 7 of the office action dated September 2, 2003.
4. Claims 1 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga. Please see paragraphs 8-10 of the office action dated September 2, 2003.
5. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga as applied to claim 1 above, and further in view of Sandrin (U.S. 5,050,591). Please see paragraphs 11-12 of the office action dated September 2, 2003.

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1. Claims 14-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Sandrin (U.S. 5,050,591) in view of Cook (U.S. 3,045,254). Referring to claim 14, Sandrin discloses a flexible member (1) having at least two layers defining a plurality of passageways (32), a receptacle (4) through which compressed air is provided to the air passages, a plurality of air holes (5) formed in the air passages, and a plurality of hermetically sealed passages secured between the layers defining the plurality of air passages at spaced locations adjacent the air passages and sealed between the layers to prevent water contact (col. 4, lines 8-25). Sandrin discloses that the hermetically sealed passages are filled with water or air in order to cushion a user during use. Cook teaches a bathtub mat/liner which a user sits or lays down on while taking a bath. In col. 2, lines 26-36, Cook teaches that foam rubber is advantageous as a cushioning material to be placed inside a bathtub mat. It would have been obvious to one having ordinary skill in the art to fill the hermetically sealed passages of Sandrin with foam or foam rubber as taught by Cook in order to provide alternative cushioned support for a user.
2. Referring to claim 15, Sandrin as modified above discloses the mat made of a flexible member including a soft vinyl material (col. 2, lines 65-68).
3. Referring to claim 16, the modified Sandrin discloses the two layers of flexible member are polymer sheet material secured together at spaced locations to define air passages. (See abstract).
4. Referring to claim 17, Sandrin discloses a limited number of holes of limited size.

5. Referring to claim 18, Sandarin discloses the 'cushioning chambers' sealed separately from the air passages, with each chamber being made of polymer material.

6. Referring to claim 19, Sandarin discloses the two layers of thermoplastic sheet material bonded together around the cushioning chambers and defining air passages in a branched array.

Referring to claims 20-25, the claims are essentially similar in scope to claims 14-19.

See discussion above.

Response to Arguments

7. Applicant's arguments filed 12/10/2003 with regards to claims 1-13 have been fully considered but they are not persuasive.

8. In response to applicant's argument that Haraga is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention.

See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Haraga relates to a hydrotherapy device as do Lin and Stern, thus the skilled artisan would be inclined to look to such devices. Applicant has also argued that the combination of Lin and Haraga do not teach the control panel being electrically isolated from the bather. This argument is not taken well, as the claims do not clearly state this. Rather the claim is read such that the remote control is required to be electrically isolated from the controller. Furthermore, even if applicant's argument is taken on that

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basis, Lin shows a controller that is electrically isolated from the bather. Haraga has been relied upon for its teaching of infrared remote controls which are notoriously old and well known in the art.

9. Applicant's arguments, with respect to the rejection(s) of claim(s) 14-25 under Sandrin in view of Baumann have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Cook. Sandrin has taught all the claimed features except for the use of foam blocks. Sandrin has disclosed hermetically sealed chambers which are filled with "blocks" of fluid solely for cushioning purposes. Cook teaches that foam rubber is advantageous in bathmats due to its superior cushioning characteristics. Thus the skilled artisan would find it obvious to substitute foam rubber in the hermetically sealed chambers for air or any other cushioning means. Since Sandrin teaches that the chambers are hermetically sealed this prevents any potential soaking of any cushioning material used.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

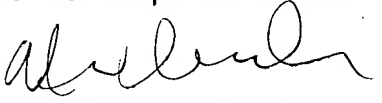
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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

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fcm

January 9, 2004